

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHNNY WILLIAM JOHNSON, III,

Case No. 2:22-cv-00462-APG-EJY

Petitioner,

ORDER

v.

C. JOHNSON, et al.,

Respondents.

On March 27, 2023, I granted Petitioner Johnny William Johnson's motion for appointment of counsel and gave the Federal Public Defender 30 days to (1) undertake direct representation of Petitioner by filing a notice of appearance or (2) indicate the office's inability to represent Petitioner in these proceedings. ECF No. 19. On April 25, 2023, the Federal Public Defender filed a notice of appearance. ECF No. 22.

I THEREFORE ORDER that the Federal Public Defender, through Ron Y. Sung, Esq., is appointed as counsel for Petitioner Johnny William Johnson pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Petitioner in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

I FURTHER ORDER that Petitioner shall have up to and including 90 days from entry of this order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Petitioner remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or

1 extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting
2 any extension thereof, I make no finding or representation that the petition, any amendments
3 thereto, and/or any claims contained therein are not subject to dismissal as untimely. *See Sossa v.*
4 *Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

5 I FURTHER ORDER that Respondents shall file a response to the amended petition,
6 including potentially by motion to dismiss, within 60 days of service of an amended petition and
7 that Petitioner may file a reply thereto within 30 days of service of the answer. The response and
8 reply time to any motion filed by either party, including a motion filed in lieu of a pleading, shall
9 be governed instead by Local Rule LR 7-2(b).


10 I FURTHER ORDER that any procedural defenses raised by Respondents to the
11 counseled amended petition shall be raised together in a single consolidated motion to
12 dismiss. In other words, I do not wish to address any procedural defenses raised herein either in
13 seriatum fashion in multiple successive motions to dismiss or embedded in the
14 answer. Procedural defenses omitted from such motion to dismiss will be subject to potential
15 waiver. Respondents shall not file a response in this case that consolidates their procedural
16 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as
17 to any unexhausted claims clearly lacking merit. If Respondents do seek dismissal of
18 unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to dismiss
19 not in the answer; and (b) they shall specifically direct their argument to the standard for
20 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir.
21 2005). In short, no procedural defenses, including exhaustion, shall be included with the merits
22 in an answer. All procedural defenses, including exhaustion, instead must be raised by motion to
23 dismiss.

1 I FURTHER ORDER that, in any answer filed on the merits, Respondents shall
2 specifically cite to and address the applicable state court written decision and state court record
3 materials, if any, regarding each claim within the response as to that claim.

4 I FURTHER ORDER that any state court record and related exhibits filed herein by
5 either Petitioner or Respondents shall be filed with a separate index of exhibits identifying the
6 exhibits by number. The CM/ECF attachments that are filed further shall be identified by the
7 number or numbers of the exhibits in the attachment. If the exhibits filed will span more than
8 one ECF number in the record, the first document under each successive ECF number shall be
9 either another copy of the index, a volume cover page, or some other document serving as a
10 filler, so that each exhibit under the ECF number thereafter will be listed under an attachment
11 number (i.e., attachment 1, 2, etc.).

12 I FURTHER ORDER that courtesy copies of exhibits shall not be provided.

13 Dated: April 26, 2023

14 
15 _____
16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23